and Industrial/Land Transportation channels. In addition, by requiring frequency coordination for the 856/860 MHz SMR Pool channels, NABER (and any other frequency advisory committee so designated by the Commission) can assist the Commission in processing the current backlog and reduce the time frame for processing of all applications. The Commission is well aware of the benefits which have resulted from frequency coordination, and the time has come to expand the program.

As discussed above, NABER believes that this proposal should only apply to the 800 MHz SMR Pool. NABER's comments on 900 MHz "Phase II" follow below.

One additional issue which must be addressed in the 800 MHz proposal is how the program impacts 800 MHz channels in the Canadian and Mexican Border Region, where the channel assignments are in different pools. NABER is currently analyzing this situation to determine the intermixture of service-area licenses overlapping with transmitter site licenses.

(b). **900 MHz SMR**

The Commission proposal for the 900 MHz band is similar to its original "Phase II" proposal.[10] This proposal suggests that 900 MHz SMRs be allowed to expand to BTA, MTA, or nationwide service areas with a minimum of 20 channels per license. In the 900 MHz band, the Commission is still dealing with mostly "virgin" spectrum. As a result, the Commission is able to fashion licensing

[10] First Report and Order and Further Notice of Proposed Rule Making, PR Docket No. 89-553, 8 FCC Rcd 1469 (1993).

and operational rules which are more creative and lead to more innovation and flexibility. Therefore, NABER endorses the Commission's proposed concept for 900 MHz licensees and suggests that perhaps MTAs most satisfy the needs of SMR service providers to serve business customers with dispatch needs.

In addition, the 900 MHz Phase II proposal would permit existing 900 MHz SMR providers to expand their existing contours to the MTA boundaries. Such operators have spent considerable funds to offer 900 MHz service and have been unable to offer service competitive to 800 MHz service as a result of the lack of access to spectrum outside of the Top 50 Designated Filing Areas. NABER suggests that instead of utilizing auctions for its assignment mechanism, existing providers should have to meet a Commission imposed coverage requirement within the MTA to expand their existing licenses. All other so called "white spaces" could then be made available for auction.

(c). **Other Two-Way Part 90 Services**

On shared channels, the Commission has not proposed any changes. However, the Commission asks if there should be a "limit" on the use of shared channels as a means of promoting competition, although "limit" is not defined.

The Commission is already considering permitting exclusive use licensing on two-way channels in the Part 90 Refarming docket. NABER believes that the exclusivity issue has been addressed adequately in that proceeding. To the extent that the Commission

will no longer permit private carrier systems on two-way channels below 800 MHz, it would appear that the issue has been decided.

With regard to Part 90 paging channels below 800 MHz, however, NABER's APCP Section has been authorized to submit a Petition for Rule Making which is the product of more than two years of discussion and evaluation, requesting that the Commission create a mechanism to permit a form of limited exclusivity on Part 90 paging channels below 800 MHz. This Petition has been carefully prepared and reviewed with the input from many APCP members. NABER suggests that the Commission look to the Petition as a diagram for creating a more rationale operating environment on intensely shared spectrum.

(d). **900 MHz Paging Systems**

The Commission has recently completed a thorough review of the licensing and application procedures for 900 MHz Part 90 systems in response to a Petition for Rule Making filed by NABER's APCP Section.[11] Applications for exclusivity have only recently been received by the Commission, and no exclusivity request has actually been formally granted as yet. Because of the exhaustive work which was done by all parties in the proceeding, and the fact that there has not been sufficient time for the new rules to really take effect, NABER strongly recommends that the Commission not alter the service at this time. As recognized by the Commission, it is arguable that there is already sufficient symmetry between the 900

[11] Report and Order, PR Docket No. 93-35, 8 FCC Rcd 8318 (1993).

MHz Part 22 and Part 90 services.[12] Therefore, NABER believes that the Commission should not alter the licensing approach recently adopted for this band.

(e). **Part 22 Paging Services**

For Part 22 paging systems, NABER recommends several changes which would improve speed of service for license grants for the band. Specifically, since the Part 22 paging services have always operated on a single channel, exclusive basis, it would be possible for the Commission to issue MTA/BTA licenses. However, additional licensees would not be permitted onto a frequency in the MTA or BTA where there has been a previous license issued.

Additionally, NABER requests that it be designated as the Commission's frequency advisory committee for the Part 22 paging channels. NABER believes that it can bring the same benefits to licensees in the Part 22 services as it has to the 929 MHz PCP licenses. NABER expects that the Commission's speed of service could be brought to the lowest levels possible, with fewer disputes among applicants, if coordination is required. As explained more fully infra, this proposal can also take into account a period of time to permit mutually exclusive applications.

(f). **220 MHz Service**

The Commission seeks comments on the possibility of regional licensing in the 220 MHz band. NABER supports this proposal, and believes that BTA/MTA could be implemented at this time, similar to the Part 22 paging frequency plan detailed above, without

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[12] FNPRM at 36.

negative impact on existing licensees. Since, at this time, all systems have the same co-channel licensees on all five channels, the service-area based licensing would not create the significant confusion which would be caused in the 800 MHz band. However, any delay in converting the licensing process could make the conversion difficult.

2. Co-Channel Interference Protection

The Commission seeks comments on whether station separations should be governed by interference at the border of the service area rather than from the transmitter site. NABER believes that this proposal will work for those services where the Commission issues service-area based licenses as recommended above. However, in the Part 90 services where NABER has recommended that the Commission retain transmitter based licensing, NABER requests that the Commission retain its rules regarding predicting interference from the transmitter site.

In the 800/900 MHz Part 90 bands, the private radio industry spent several years developing co-channel separation criteria which has only recently began to impact the services.[13] NABER believes that the criteria is fair for all licensees and should be continued for transmitter based licenses.

In the Part 90 bands below 800 MHz, the Commission has proposed a procedure in the Refarming proceeding similar to the

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[13]While applications for the General Category, Business, Industrial and Public Safety Pools have been granted under the new "short-spacing" table for several months, the Commission is only now beginning to process SMR Pool applications which utilize the new table.

800/900 MHz band. The private radio industry has commented upon the Commission's proposal and NABER believes that the Commission should adopt its proposal in that proceeding.

3. Emission Masks

The Commission asks if it is possible to loosen the emission mask criteria for certain Part 90 services. Although in most cases there will be little ability to utilize more liberal emission masks because of adjacent channel problems, NABER supports the ability of a licensee to utilize a more liberal emission mask where the licensee is also the licensee of one of the adjacent channels. In this manner, a licensee can combine two adjacent channels and form a single channel, while maintaining the same protection criteria on the "outside" edge of each of the two channels.

For 900 MHz paging carriers, for example, a licensee could combine two adjacent channels to create a single, 50 kHz channel. This channel could then be paired with a narrowband PCS license, enabling the licensee to offer services at data throughputs previously unavailable.

4. Antenna Height and Transmitter Power Limits

As discussed previously, NABER does not support conforming the cellular and SMR antenna height and power rules. The Commission's proposal assumes that an SMR has either a cellular-like cell architecture or a single high power local transmitter.
In certain areas, a wide-area SMR licensee may not have enough spectrum to be able to use cellular type transmitter sites, and may instead need to utilize a "macro" site. A cellular system would

not be faced with this type of limitation. Thus, imposition of an arbitrary power and height limitation would limit the operator's ability to compete.

In the bands below 800 MHz, it would not be practical to conform the Part 90 and Part 22 ERP limits. In the 150 MHz band, private radio systems currently utilize equipment with a bandwidth of 30 kHz. However, channel assignments in the band are spaced at 15 kHz. Therefore, altering the ERP limits would have a significant impact on adjacent channel licensees. In the 450 MHz band, there are thousands of offset systems which would be impacted.

NABER has already supported permitting operation with 3500 watts ERP for 929 MHz paging licensees with regional exclusivity. Expansion to all 929 MHz licensees would also be appropriate. However, consideration of co-channel separations would require that the Commission amend Section 90.495(b)(2) which standardizes the separation criteria between unaffiliated stations.

Conforming mobile power limits between Part 90 and Part 22 is problematic. In its Comments in ET Docket No. 93-62 NABER supported the 1992 ANSI/IEEE Guidelines. However, the Commission should recognize that not all SMR systems operate in a cellular configuration. Therefore, portable radios on such systems must operate with a higher power. Limiting the mobile units power to that of a cellular portable would foreclose almost all high powered SMR systems from providing portable service. In addition, as discussed previously, there are geographic areas where wide-area

licensees may not have sufficient capacity to utilize a cellular configuration. In such areas, adaptable portable units can vary the ERP of the unit.[14] As an additional example, neither RAM Mobile Data nor Geotek, both wide-area SMR providers, use cellular architectures and would be penalized if they were contained to the Commission's proposed model. Therefore, NABER does not support conforming the portable power limits between Parts 90 and 22.

5. **Modulation and Emission Requirements**

NABER agrees with the Commission's evaluation that there is no need for modulation or emission requirements where a licensee enjoys exclusive use of a channel.

6. **Interoperability**

Requiring interoperability at the subscriber unit would result in mandating standards for the entire wireless industry. Instead, a form of interoperability can be offered at the network level in that any subscriber on one interconnected SMR network can reach any other CMRS subscriber through the PSTN. Since an SMR must be interconnected to the PSTN to be classified as a CMRS provider this would not be a burden to the SMR provider.

There are currently three (3) separate SMR platforms in common use which are not compatible. Each system can be interconnected with the PSTN and therefore every SMR operator could potentially be reclassified as CMRS providers if they choose to interconnect. The SMR service has been in operation for two decades with these

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[14]In addition, dispatch SMR units are not continuous duty cycle devices, thereby minimizing the need for the type of ERP limitation imposed on interconnected units.

platforms. Therefore, requiring interoperability could require the junking of millions of dollars of mobile units and repeaters. In the mature SMR marketplace, NABER believes that requiring interoperability would be devastating.

Of the technologies announced for wide-area SMR Systems, Geotek's technology, Motorola's MIRS technology, RAM's mobitex technology and Ericsson/GE's EDACS technology are not compatible with one another. It would be extremely short sighted and costly to require one system's handsets to operate with all others. Further, required interoperability could stifle innovation in a service experiencing tremendous growth and renowned for serving individual customer needs.

At this time, NABER believes that requiring interoperability for Part 90 services is neither desirable nor feasible. NABER urges the Commission to reject this suggestion.

C. Operational Rules

1. Construction Period and Coverage Requirements

The Commission has proposed to extend all Part 90 construction periods to one year. Alternatively the extended period could apply only to CMRS licensees. NABER supports conforming the construction period for Part 90 and 22 systems to one year. The additional four month period for conventional licensees may alleviate some of the STA Requests received by the Commission when a licensee is unable to access a site and must wait a significant period of time for a modification to be granted. Further, in some areas of the country, access to a tower site is not possible during the winter months.

A one year construction period will permit licensees in such areas to consider weather factors when scheduling installation.

It is also proposed to require CMRS licensees to begin "service to the public" by the end of the construction period.[15] This would change the current Part 90 requirement that permitted "internal" units to count towards the operational requirement.

NABER does not oppose the change to require "external" mobile units to meet the operational requirement. However, NABER suggests that the Commission accept an alternative showing as also meeting the "service to the public" standard.

Specifically, there may be cases where a licensee only wishes to place internal units on the system initially, especially if a more complex installation is required, such as a system which is part of a wide-area network. Also, despite genuine efforts, a licensee may be unable to obtain any external customers by the deadline as a result of poor marketplace conditions. Therefore, NABER suggests that a licensee be permitted to meet its construction requirements if the system is interconnected with the PSTN. In such an event, the interconnection with the PSTN demonstrates that the system is able to serve customers and that the licensee genuinely has an intent to construct and operate.

The Commission proposes to standardize construction requirements for extended implementation licensees. Comment is sought on permitting extended implementation, similar to 929-930 MHz paging systems, for other paging systems, and standardizing

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[15] FNPRM at par. 63.

extended implementation construction requirements.[16] NABER supports permitting all licensees to enjoy the benefits of extended implementation. However, such status should only be granted where the applicant can meet the necessary hurdles to demonstrate that the additional time is warranted. The Commission should not grant extended implementation merely because the applicant requested such status. Benchmarks should be required to be met, and channels recovered for failure to meet the benchmarks. NABER supports the use of performance bonds for 931 MHz systems requesting extended implementation, as currently required for 929 MHz PCP systems.

NABER also supports the standardization and use of FCC Form 800A for all Part 90 and non-cellular Part 22 licensees for the reporting of construction status. The form is simple to use, and the Commission's current procedure of sending the form to the licensee prevents licensees from forgetting to inform the Commission of construction status. Further, it is the Commission's current policy to send the form a second time if a response is not received, with a third notice that the license will be cancelled within thirty (30) days if the second notice does not elicit a response. NABER supports the continuation of this policy. Part 90 licensees are already familiar with the form, and the use of one form for a Part 90 CMRS system and another form for a Part 90 PMRS system would be confusing.

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[16] FNPRM at par. 64.

2. Loading Requirements

The Commission has asked whether its five year loading criteria should continue to be used for Part 90 CMRS licensees. The Commission also asks if the "40 Mile Rule" should be modified or eliminated.

As discussed in its Comments in RM-8387, it is NABER's belief that the time has come for the Commission to eliminate loading requirements. The development of Waiting List areas for virtually the entire country has resulted in legitimate licensees in truly secondary and rural markets with initial license grants prior to June 1, 1993 being faced with the need to load their systems. However, many such areas do not have sufficient analog, dispatch mobile loading available to permit retention of channels by licensees.

This is not to say that the loading requirement and 40 Mile Rule did not serve a useful purpose. In major urban areas, the rules have ensured that spectrum did not lay fallow and was not hoarded. However, there are virtually no SMR Systems in major urban areas[17] which have not already passed the five (5) year

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[17]Urban areas are defined in Section 90.621(d) of the Commission's Rules as locations less than 100 miles from New York, New York; Los Angeles, California; Chicago, Illinois; Philadelphia, Pennsylvania; San Francisco, California; Detroit, Michigan; Boston, Massachusetts; Houston, Texas; Washington, D.C.; Dallas-Fort Worth, Texas; Miami, Florida; Cleveland, Ohio; Saint Louis, Missouri; Atlanta, Georgia; Pittsburgh, Pennsylvania; Baltimore, Maryland; Minneapolis-Saint Paul, Minnesota; Seattle, Washington; San Diego, California; and Tampa-Saint Petersburg, Florida. These are areas of the country where true spectrum shortages exist. This definition of "urban areas" is different than the definition of "Wait List Areas", which are areas where at least one application for SMR Spectrum has been filed for which "clear" channels are not

loading benchmark, or which have already been loaded prior to the applicable date. As a result, there are few, if any, channel takebacks in areas of the country where there is a real capacity shortage. In smaller areas, the loading rules now serve only to penalize operators who have genuinely attempted to load their systems, while significant 800 MHz spectrum is unconstructed in the same area. Thus, it is NABER's view that the Commission's loading rules for trunked SMR Systems have passed their period of usefulness to accomplish the Commission's purpose.

However, in contrast to its view about the mature 800 MHz market, NABER believes that there should be a limit on the number of licenses in a single market for a single entity when the Commission makes available new spectrum for licensing. Thus, for example, there should be an initial limit on the number of 900 MHz Phase II licenses which can be licensed to a single entity. Thereafter, the marketplace should govern to permit operators to consolidate spectrum without regard to the 40 Mile Rule.

3. User Eligibility

The Commission has proposed to eliminate user eligibility rules for all CMRS licensees. This seems appropriate for CMRS licensees, since there is a requirement to serve the public. Therefore, NABER supports this proposal.

4. Permissible Uses

The Commission has proposed to eliminate common carrier service restriction on Part 90 CMRS licensees, as well as

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available at the specific location requested.

permissible communications restrictions. While NABER supports the lifting of as many permissible use restrictions as possible, permissible communications restrictions as currently in the Commission's Rules are still necessary on shared channels in order to maximize available airtime.

5. Station Identification

NABER believes that station identification can be eliminated for nationwide 900 MHz paging and SMR systems. Also, to the extent that a single operator is the licensee of a contiguous system with multiple call signs (because of Commission computer limitations), the Commission should permit a single call sign i.d. per system for all CMRS and PMRS stations.[18] Finally, Part 22 CMRS licensees should be permitted to transmit their i.d. in digital form, as permitted in Part 90.

Further, NABER supports the standardization of the time when identification must take place. The repeated identifications currently required by the rules lead to an inefficient use of a scarce resource, airtime. Therefore, NABER supports a requirement that a station emit its identification once per hour, within five (5) minutes before or after the top of the hour. This requirement, similar to the i.d. requirements for broadcast stations,[19] would give co-channel licensees and the Commission's Field Operations

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[18]On May 16, 1994, NABER filed a letter with the Private Radio Bureau requesting this policy change with respect to Private Carrier Paging Systems.

[19]See, 47 C.F.R. §73.1201 (1993).

Bureau a set time to listen for identification, and save airtime for all stations.

6. General Licensee Obligations

The Commission has proposed to conform its rules between Part 90 and 22 concerning: (1) licensee management and control; (2) posting of station licenses; (3) station inspections; and (4) responses to official communications. While NABER supports this proposal in concept, it should also be recognized that the Part 90 services have a long history of the utilization of management agreements. This is particularly the case with small SMR operators, regardless of whether their systems are interconnected.[20] NABER urges the Commission to adopt rules which ensure that no transfer of control has taken place, but which give licensees and managers the most flexibility possible. In this light, NABER recommends that the Commission adopt for all services the policies currently in use for Part 90 and as enunciated in the "Big Rock" decision.[21]

7. Equal Employment Opportunities

The Commission has proposed to extend to Part 90 CMRS licensees the EEO requirements contained in Part 22 rules. However, the Commission asks if the current exemption for licensees with under 16 employees provides sufficient flexibility for small business licensees.

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[20]Of course, the need for management agreements may be minimized by the elimination of the "40 Mile Rule".

[21]Applications of Motorola, Inc., FCC File Nos. 507505, et al., issued July 30, 1985.

Although NABER recognizes that the Commission is statutory bound to extend EEO requirements to Part 90 CMRS licensees, NABER urges the Commission to closely review the sixteen (16) employee exemption for compliance. Many small SMR providers employ more than sixteen (16) employees, and such businesses would have significant additional costs by the record keeping and reporting requirements. Therefore, as suggested by the Commission, NABER recommends that the Commission increase the sixteen (16) employee exemption to twenty-five (25) employees.

8. **CMRS Spectrum Aggregation Limit**

The Commission has proposed a "spectrum cap" for CMRS licensees, similar to the manner in which wide-band PCS licenses are to be issued. The Commission has asked numerous questions concerning whether the cap should be an aggregate of all CMRS services, or whether each service should be viewed separately. Further, the Commission has asked how to define a market (MTA, BTA, etc.) for a spectrum cap.

The Commission believes that the cap should approximate the total amount of spectrum that can be held by a single licensee under its combined broadband and narrowband PCS allocations. Thus, the tentative proposal is a 40 MHz limit, with some upward flexibility to permit a licensee to provide both broadband and narrowband PCS services. The Commission also asks whether satellite services should be included in the cap and, if so, how it should be counted.

The Commission proposes a five percent ownership minimum to trigger attribution for the cap. The cap would be imposed on any licensee serving 10 percent or more of the population in a designated area. The Commission asks whether "designated entities" should be treated differently under the cap, and how grandfathering of existing systems exceeding the cap should be treated.

NABER, an organization which is representative of both large and small SMR and PCP licensees, opposes the Commission's spectrum cap. Although NABER supports a limit on the amount of spectrum assigned to a single entity in an allocation of new spectrum,[22] NABER believes that a spectrum cap in a mature market thwarts the marketplace forces which have led to a competitive wireless communications infrastructure. NABER believes that the Commission has adequate safeguards in place to ensure the wireless marketplace remains competitive and a spectrum cap is unnecessary to accomplish this goal.

Should the Commission elect to implement a spectrum cap, it is vital that the Commission closely review how it intends to "count" spectrum. Regardless of whether the Commission reviews the spectrum controlled by an entity on a BTA, MTA or MSA basis, it is important that the Commission recognize that a single frequency assignment in one service is not equivalent to a single frequency assignment in another service. For example, a Part 90 SMR System with an assignment for a particular channel (at 25 kHz bandwidth) at a particular location may have numerous co-channel licensees

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[22] See, page 32 supra.

within the relevant BTA or MTA. In contrast, a cellular licensee would have no co-channel licensees and a wider bandwidth (30 kHz). Thus, any "count" by the Commission must review each service separately.

D. Licensing Rules and Procedures

1. Application Forms

One form combining Form 401 and Form 574 is proposed to be used by applicants and is attached to the FNPRM. While NABER supports the use of a single, modular form, NABER believes that alterations to the form can be made to further streamline the form and the licensing process.

In general, a form 574 in most cases would go from the present single legal size sheet to 5 pages, 8-1/2 x 11 inches in size: Form #### (pages 1 and 2) and Schedules D, E, and F. This explosion of paper is unnecessary and should be revamped to provide a small private licensee the ability to file the least amount of paper necessary. A typical Form 401 or 489 application would remain at seven pages plus attachments, but include less information than is currently provided. Less information should require less space. In order to effectuate simplification of the forms, NABER presents the following specific suggestions:

1. Form #### changes:

   a. The form should be compressed to fit onto one 8-1/2 x 11 page. Items 18, 23, 24, 25, 30, 31, 32 and 33 apply only to CMRS. These items should be placed on Schedule A since that schedule deals with CMRS;

   b. Compress the applicant information to the size used on 574 (which will take up about one-half the

space proposed). Use the same format for the representative information;

c. Move the text of qualifications and certification to the instructions and have the applicant sign a simple statement that he/she complies with the requirements;

d. Putting filing fee information on the form is an improvement;

e. Include the type of filing, control point information and other entries that apply to nearly all filings;

2. Schedule A changes:

a. This form, with the changes noted below, should fit on a single 8-1/2 x 11 page;

b. Add the items that apply to CMRS only from Form #### (Items 18, 23, 24, 25, 30, 31 and 32);

c. List purpose in instructions and provide small box to fill in the single letter;

3. Schedule B changes:

a. This form should fit on two 8-1/2 x 11 pages by making the changes listed below;

b. Reduce the space for location information by using a format similar to the present Schedule B as follows:

Action	Tower No.	FAA Study No.	
Street		NAD27 Lat.	NAD27 Long.
City, County, State		NAD83 Lat.	NAD83 Long.
Old Lat.	Old Long.	Datum	FCC Location No.

c. Tower information is required for nearly all filings. Add Schedule F information in the space made available by compressing location information. The information included on Form 574, including headings, requires 7 lines for 1 site. The additional information provided by Schedule F will require two more lines (one for headings, one for information) configured as follows (field widths in parentheses): Owner (25) Phone (10) Arrangement (1) Structure Height (4) Overall Height (4) (Note:

the FAA study number is included in item C3). Put tower sketches in the instructions and not on the form;

4. Schedule E changes: Compress the location and coordinate information as described for Schedule B for consistency;

5. Schedules D, E and F changes:

a. Include all frequency, location, and tower location on a single 8-1/2 x 11 Schedule E. It will include all Form 575 information except applicant information included on Form ####. It would also include the additional information shown on Schedule F that is not included in Form 574;

b. Put tower sketches in the instructions and not on the form. This information will be sufficient for most filings;

c. Remove the remote pick up sections from Schedule E and place them on Schedule D. Use Schedule D for items like these that are not needed for applications;

d. Using the format of the 574, put the tower information on Schedule E. Add new Schedule F tower information that is not included on Form 574 in format shown above for Schedule B; this layout should require only seven lines including headings for this new information for six sites.

e. Make a column for action requested for each frequency/location so that different transmitters may be added, modified and deleted on the same Schedule E.

f. Tower information is needed for almost every filing. Incorporate the tower information into Schedules B and E as noted above and eliminate Schedule F.

2. Application and Regulatory Fees

The current Part 22 application fee of $230.00 and the Part 22 $60.00 per 1000 subscriber regulatory fee is proposed for all CMRS licensees by the Commission. Although NABER believes that similarly situated services should be charged the same fee, the

Commission should closely review each service and justify the charges based upon the actual services to be performed by the Commission.

In the case of a Part 90 CMRS SMR licensee, the Commission is proposing to charge $230.00. Yet, if the same applicant elects not to interconnect the system with the PSTN, the charge would be $35.00.[23] However, the Commission would not be performing different services for the two types of applications, other than placing the CMRS application on Public Notice.

NABER would propose that the Commission consider lower application fees for applications, regardless of CMRS or PMRS status, which have received coordination from one of the recognized frequency advisory committees. An application which has been coordinated is routinely granted by the Commission with little review. Since the Commission would have performed less work on a coordinated application, it is reasonable for the Commission to charge a lower fee.

3. **Public Notice and Petition to Deny Requirements**

As required by Section 309 of the Communications Act, Public Notice and Petition to Deny provisions are proposed for all CMRS licensees. Since applications are rarely processed in less than thirty (30) days, placing all CMRS applications on Public Notice should not pose an undue burden on Part 90 licensees. Presently,

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[23]Pursuant to the Order adopted on June 6, 1984 by the Commission, the fees would increase to $260.00 and $125.00, respectively. Order, Gen Docket No. 86-285, FCC 94-141, released June 8, 1994.

application information is readily available from any one of a number of service providers. As a result, any party wanting to know about applications which have been filed has already been receiving such information. In addition, since the Commission has generally accepted Informal Petitions to Deny Part 90 applications, pursuant to Section 1.41 of the Commission's Rules, formalization of this process should not prove too troublesome.

4. **Mutually Exclusive Applications/Competitive Bidding**

The Commission has proposed to accept mutually exclusive applications for 30 days after Public Notice for all Part 22 applications, with auctions resolving mutually exclusive situations. The Commission seeks comments about extending the same procedures to Part 90 (except 220 MHz) applications. Consideration of the applicability of mutual exclusivity rules to Part 90 929-930 MHz paging systems is being deferred until after the reconsideration of the "Exclusivity Order".

To the maximum extent possible, NABER supports the continued use of first-come, first-serve procedures for Part 90 applications. As discussed previously, the 851-860 MHz band, for which non-CMRS private systems are eligible, should remain licensed on a first-come, first-serve basis. Should the Commission permit mutually exclusive applications to be filed against CMRS applications, all CMRS and non-CMRS applications for the band would need to be held while the Commission selects among mutually exclusive applications. This would have a devastating effect on non-CMRS applicants. In effect, non-CMRS licensees would be subjected to CMRS procedures.

As recognized by the Commission, continued use of first-come, first-serve procedures may be appropriate where amending the procedures would affect the availability of frequencies to PMRS as well as CMRS applicants.[24]

On this basis, NABER recommends that the Commission permit mutually exclusive applications within thirty (30) days for the 861/865 service-area based licensing band, while retaining first-come, first-serve procedures for 851/860 MHz applications.

If the Commission believes that first-come, first-serve procedures should not be used for 929 MHz paging channels, NABER recommends that the Commission place the applications on Public Notice **prior to** frequency coordination. In this manner, the frequency coordinator will know if there are several applications which need frequency assignment, and the coordinator can seek to determine an appropriate frequency for **each** applicant. Thus, the coordinator can assist the Commission in resolving cases of mutual exclusivity. On the other hand, if the application is coordinated prior to frequency coordination, the coordinator will need to wait for the Commission to decide among the competing applicants before the coordinator can issue any additional frequency coordinations in the area or co-channel. This would lead to unnecessary delays in the licensing process.

NABER suggests similar procedures for all Part 22 paging frequencies. By having applications receive frequency coordination after the Public Notice period, a large portion of the Commission's

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[24] FNPRM at par. 124.

work will be accomplished. This will speed the grant of applications for Part 22 services as it has for Part 90 services.

5. **Amendment of Applications and License Modification**

Significant changes to the definition of major modifications for the Part 90 services has been proposed by the Commission, with the ability to file competing applications and hold auctions where the major modification "would fundamentally alter the nature of scope of the licensee's system". A major modification would be an application proposing the location of a new facility more than two kilometers from any existing facility operating on the same frequency; or an application proposing locations anywhere on a new frequency.[25] Where a modification is not deemed suitable for auction, the Commission proposes to use the first-come, first-serve procedures, with only applications received the same day treated as mutually exclusive.[26]

NABER concurs with the Commission's proposal in paragraphs 132 and 133 to limit competitive bidding procedures to exceptional modifications and treat only same-day applications as being mutually exclusive. The Commission must strive to limit applications which merely serve to harass or block genuine licensees. Further, such an approach would maximize the Commission's speed of service in processing all applications.

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[25] FNPRM at par. 132.

[26] FNPRM at par. 133.

6. Conditional and Special Temporary Authority

The Commission has proposed a higher standard for Part 90 CMRS licensees seeking STAs or wishing to operate on a conditional basis. Applicants could begin construction only if no petitions or mutually exclusive applications are on file. Most importantly, the Commission would prohibit commencement of operations prior to Commission licensing. STAs would only be granted in "extraordinary" circumstances.

NABER believes that the Commission has sufficient discretion under Section 309(f) of the Communications Act to permit temporary operation for applications which have received frequency coordination. The Commission and Congress have already recognized the benefits which coordination brings to the land mobile industry.

Presently, the Commission is experiencing application backlogs of more than ten (10) months for non-coordinated services. As a result, the Commission has been forced to allocate personnel which would otherwise process coordinated applications to help with non-coordinated applications. This has led to an increasing long period of time for grant of coordinated applications. Since such applications are routinely granted, there is no reason why the applicants should not be permitted to operate on a conditional basis. Conditional authorization also has the benefit of alleviating some of the pressure on the Commission's status to process applications quickly and can permit the orderly growth of loaded systems without lengthy delays.